PUBLIC PROSECUTOR

v.

CHEW YOKE YONG & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
MOHD. AZMI J
[CRIMINAL TRIAL NO. 12 OF 1981]
11 MAY 1982

CRIMINAL PROCEDURE: *Accused charged with having under their control two primed handgrenades - Offence punishable under s. 57(1)(b), Internal Security Act No. 82 (Revised 1972) - Whether accused in control of handgrenades at material time.*

Three women construction workers were charged with having under their control two primed handgrenades at a house in Petaling Jaya an offence punishable under s. 57(1)(b) of the Internal Security Act No. 82 (Revised 1972).

The case for the prosecution was that on the early morning of 12 September 1977, a party of Special Branch officers led by ASP Zainal (PW2) went to the house at Petaling Jaya for the purposes of arresting the first and second accused whose identities were already known to the ASP. They waited outside the house for about an hour for the two accused to come out, then entered the compound of the house through the front gate which was bolted but unlocked. The two accused who were seen washing clothes beside the house were arrested and handcuffed. They led the officers to their room in the house, where two handgrenades were found on the floor of the room. Nothing else was found. Particulars of the other occupants who were present in the house during the raid were recorded. On the evening of the raid, the third accused was arrested when she returned to the house.

After the prosecution case, the Court held that there was sufficient evidence that the two handgrenades were "ammunition" within the meaning of s. 2 of the Internal Security Act 1960 (Revised 1972) and that substances found in one of the casings were "explosives" as defined by s. 2 of the Explosives Ordinance 1957. It also held that there was *prima facie* evidence that the two handgrenades were found on the floor of the room and that the first and second accused were in joint control of them at the material time. The two accused were called to enter their defence, while the third accused was acquitted and discharged as the only evidence against her was that she was a co-tenant of the room for about three weeks prior to the raid.

The first and second accused in their defence denied that they had any knowledge of the existence of the two handgrenades in their room. They denied leading the police to their room or handing their NRICs in the room. They stated they remained in the hall until they were taken to the police station. They contended that the two grenades were never in their room, as otherwise they would have seen them when they went to bed on 11 September and when they woke up on the morning of 12 September. They denied any knowledge of how the grenades came to be in their room even if the grenades were found there, as they were washing clothes outside the house at the material time. There were other tenants in the house who had access to their room.

JUDGMENT

Held:

[1] On the issue of knowledge with reference to "conscious control", the prosecution was relying entirely on circumstantial evidence and the nature of the evidence did not point irresistibly to the conclusion that the grenades were in the room when the two accused left for washing on the morning in question.

(a) As there were other tenants in the house, it was inconceivable that if the two accused had known of the grenades they would have left the door unlocked when they went out to wash clothes.

(b) Even if the whole of the prosecution version of the incident were accepted, the conduct of the two accused during the whole episode did not support the suggestion that they were trained to use the grenades in the face of police arrest. Instead, their conduct was consistent with innocence.

(c) There were some unsatisfactory aspects of the prosecution case which gave rise to doubts as to the veracity of the members of the raiding party. The raiding party waited nearly an hour before arresting the two accused though the place where the accused were washing could easily be seen from the road and it might well be that the police were waiting for person or persons other than the accused. Secondly, the material discrepancies between the evidence of some of the prosecution witnesses appear to strengthen the defence version of the episode of the arrests of the accused and the discovery of the grenades.

[2] The prosecution had failed to prove that the accused knew that the grenades were in their room when they were washing clothes outside. Mere proximity was not sufficient. [*Yong Sang v. PP* [1955] MLJ 132]. To establish "control" it is imperative for the prosecution to prove that (1) the accused was conscious of the objects under his control and (2) the accused had power of disposal over the objects other than actual physical control [*Pan Kok Wah v. PP* [1966] 2 MLJ 141; *PP v. Ang Boon Foo* [1981] 1 MLJ 40; *Dollfus Mieg Et Compagnie S.A. v. Bank of England* [1950] 1 Ch 333].

[Accused acquitted and discharged.]

Cases referred to:
Yong Sang v. PP [1955] MLJ 132
Pan Kok Wah v. PP [1966] 2 MLJ 141
PP v. Ang Boon Foo [1981] 1 MLJ 40
Dollfus Mieg Et Compagnie S.A. v. Bank of England [1950] 1 Ch 333

Legislation referred to:
Internal Security Act 1960 ss. 2, 57(1)(b)
Explosives Ordinance 1957, s. 2

For the prosecution - Phang Ah Hee, DPP
For the first & second accused - Sidney Augustin
For the third accused - Ngeow Yin Ngee with Karpal Singh

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Also found at [1982] CLJ 436